

ALTERNATIVE DISPUTE RESOLUTION CELL

presents

INTERNATIONAL ARBITRATION COMPETITION, 2025

IN COLLABORATION WITH

PSL Advocates
& Solicitors

1st and 2nd MARCH, 2025

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PROBLEM STATEMENT¹

I. FACTUAL BACKGROUND

1. In 2020, the Suburban Railways Corridor of Andromeda Limited ('**SRCA/ Employer**') invited bids for the design, supply, installation, testing and commissioning of a Traction Power Supply System, Traction Sub-stations, Auxiliary Stations, Switching Stations, and Auto Transformer Stations on a Design-Build Lump Sum Price ('**Project/Contract**') in the western corridor of Andromeda². The primary intent of the project was to develop a comprehensive and rapid freight corridor in Andromeda to enhance trade and commerce and strengthen the existing infrastructure in the country.
2. In accordance with the bid conditions, a consortium, *namely* Premier Rail-Hightech Private Limited ('**PRHPL/ Contractor**'), comprising two members: Premier Rail Corporation as the lead member from Chandrayan and the second member, Hightech Private Limited from Andromeda, submitted their bid and emerged as the lowest bidder for the Project. Accordingly, on 20 October 2020, the Contract for the Project was executed between SRCA and PRHPL. Given that the Project involved various intricacies and the convergence of civil and mechanical engineering aspects, it was essential for all bidders to nominate a specialised design sub-consultant. To meet the bid requirements, PRHPL nominated M/s Lanco Designs Pvt. Ltd. ('**Lanco**') from Andromeda as the specialised design sub-consultant for the Project. Consequently, SRCA deemed Lanco to be an integral part of PRHPL's consortium. The relevant clauses of the Contract have been extracted and reproduced in **Appendix – 1**.
3. As a specialised design sub-consultant, Lanco was responsible for managing the entire scope of work related to the design obligations of the Project. Typically, in a design and build contract such as the present Project, the primary design obligation falls on the Contractor. However, in this instance, PRHPL was unable to meet the design criteria at the

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² The laws of Andromeda are *pari materia* to the laws of India.

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bidding stage due to a lack of experience with design-related obligations in infrastructure projects like the current one. As a result, Lanco's inclusion enhanced the technical requirements of the bid and assisted PRHPL in fulfilling the design criteria as well.

4. Given Lanco's essential role in the Project, SRCA considered it appropriate to execute a Designer's Warranty with Lanco, which included primary obligations related to the design works to be carried out by Lanco. Although the Designer's Warranty was regarded as an independent agreement, it also became an integral part of the Contract between SRCA and PRHPL through reference in the Designer's Warranty. The relevant clauses from the Designer's Warranty have been extracted and reproduced in **Appendix – 2**.
5. The initial duration of the Contract was 24 months, and accordingly, the scheduled completion date was 19 October 2022. However, due to various issues related to delays in land acquisition and the handing over of the requisite right of way, SRCA granted an extension of time by an additional 18 months for the completion of the work, considering the national and strategic significance of the Project without imposing any liquidated damages. Thus, the revised completion date for the Project was stipulated as 19 April 2024. In terms of the contract between PRHPL and Lanco regarding design obligations, the timeframe allotted for the completion of design works was set for 20 October 2022, concurrent with the Contract's timelines. However, this was extended to 20 October 2023 to ensure that Lanco fully discharged its design obligations. Despite earnest efforts, only 95% of the designs related to the Project had been completed by 20 October 2023.
6. Upon completing 95% of the design work, Lanco immediately sought to be discharged from its contract with PRHPL and requested the return of its bank guarantee, which PRHPL promptly returned. This essentially absolved Lanco of any liabilities under the agreement with PRHPL. While PRHPL unilaterally approved Lanco's discharge, SRCA was unaware of this decision-making process by PRHPL.
7. SRCA was unable to discern this development until PRHPL submitted a design without a design certificate. At this point, SRCA grew suspicious of potential wrongdoing by PRHPL. In this context, SRCA sought clarification from PRHPL regarding the absence of the design certificate with the design submittal, and PRHPL promptly issued a design certificate duly executed by the chief design personnel appointed by Lanco. While SRCA approved the design submittals as its preliminary concerns were addressed, it still invited

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PRHPL and Lanco to a design review meeting on 10 January 2024. Representatives from SRCA and PRHPL participated in the meeting; however, no one from Lanco attended. This reignited SRCA's concerns.

8. Subsequently, PRHPL submitted another design as part of the remaining design works, and this time, the design certificate was signed by its own representative, who bore the title '*head of the design and technical task force*'. However, this went unnoticed by SRCA, which approved the design without any objection or demur.

9. Another design review meeting was notified by SRCA, which was scheduled to be held on 31 January 2024. Representatives from SRCA and PRHPL again participated, but no representative from Lanco was present. At this stage, SRCA queried about Lanco's absence from the meeting, and in response, PRHPL assured that Lanco's representative would be present at the next meeting.

10. Dissatisfied with PRHPL's evasive response, SRCA issued a show-cause notice to Lanco, which caused turmoil throughout the organization. SRCA stated that, in its view, Lanco's absence may have led to a change in consortium without any prior notification or approval. This became apparent through PRHPL's proposal to undertake the remaining 5% of design works to ensure proper compliance with the terms of the Contract. The revised proposal attempted to divert attention from the lapses discovered by SRCA and was submitted with an undertaking to assume the entire responsibility for the design-related works for the Project. This was premised on the strength of significant experience acquired from Lanco's previous engagement in the Project and adoption of Lanco's design methodology and capabilities. This was approved solely by the Engineer for the Project rather than by SRCA.

II. THE DISPUTE

11. The disputes arise from an issue flagged by SRCA regarding the design of the structural works, which raised safety concerns for the entire project. Furthermore, due to Lanco's unauthorised and unapproved exit, SRCA decided to halt the commissioning of the entire Project and immediately issued a request for arbitration on 10 February 2024 against PRHPL for fraudulent misrepresentation of designs, claiming damages for the full amount paid to Lanco through SRCA. The request for arbitration was submitted in accordance with

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the arbitration rules of the Worldwide Chamber of Commerce (**‘WCC/ WCC Rules’**), under which the Court of Arbitration administers the arbitral proceedings under the auspices of the WCC. The relevant rules have been extracted and reproduced in **Appendix – 3**.

12. On 20 February 2024, in its answer to the request for arbitration, PRHPL primarily stated that the design-related obligations were solely vested in Lanco, and PRHPL did not have any role in the preparation of the designs. It was further averred that any liability concerned with the design-related obligations is solely attributable to Lanco and not PRHPL. After perusing PRHPL’s answer to the request for arbitration, SRCA filed a request for joinder of Lanco to the arbitral proceedings, and this request is presently pending adjudication before the Ld. Sole Arbitrator *viz.*, King Lombardi. Concurrently, SRCA also issued a request for arbitration to Lanco in terms of Clause 18 of the Designer’s Warranty and claimed damages for the issue in designs of the Project. In response, Lanco refused its consent for arbitration citing the pendency of the arbitral proceedings before SRCA and PRHPL and contended that SRCA cannot benefit by claiming damages from both PRHPL and Lanco for the same cause of action which is essentially duplication of claims. Accordingly, SRCA has filed a petition under Section 11 of the Arbitration and Conciliation Act, 1996 of Andromeda seeking appointment of an arbitrator for its dispute against Lanco which is pending adjudication.

13. After the completion of pleadings between SRCA and PRHPL, about 90 days from the date of commencement of the arbitration, PRHPL also filed objections to the jurisdiction of the Sole Arbitrator stating that the dispute involves elements criminality due to allegations of criminal breach of trust and forgery, which are incapable of resolution through arbitration. This was premised on the criminal complaint filed by SRCA alleging the fraudulent use of Lanco’s designs by PRHPL, pursuant to which the police have registered a First Information Report (**‘FIR’**). Consequently, the directors and key managerial personnel of PRHPL apprehended coercive steps by the police and immediately approached the High Court of Mercury in Andromeda (**‘High Court’**) seeking quashing of the FIR and stay on the investigation by the police. PRHPL primarily argued that the dispute is purely civil, involving contractual breach and damages and cannot be cloaked as a criminal offence, which the High Court appreciated, and an interim relief with respect to stay on investigation was ordered till final adjudication of the petition.

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III. THE ISSUES

14. At this stage, the Sole Arbitrator has framed preliminary issues for determining the following:
- (i) Whether the Tribunal holds jurisdiction to proceed against a non-signatory to the arbitration agreement?
 - (ii) Whether or not Lanco can be impleaded in the ongoing arbitration proceedings between SRCA and PRHPL and is the request for joinder by SRCA in accordance with the WCC Rules?
 - (iii) Whether the challenge to the jurisdiction of the Tribunal is maintainable after lapse of the timelines prescribed under the WCC Rules?
 - (iv) Whether the Tribunal holds jurisdiction to decide the claims raised by SRCA which involve elements of fraud, criminal breach of trust, and forgery with a pending criminal investigation which the High Court has stayed?

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APPENDIX – 1

Article 1.1

Definitions

Fraudulent practice is any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation.

Article 1.5

Priority of Documents

The documents forming the Contract are to be taken as mutually explanatory of one another. For the purposes of interpretation, the priority of the documents shall be in accordance with the following sequence:

- (a) the Contract Agreement (if any), (b) the Letter of Acceptance,
- (c) the Letter of Tender,
- (d) the Particular Conditions,
- (e) these General Conditions,
- (f) the Employer's Requirements Technical Specifications,
- (g) the Employer's Requirements General Specifications, and
- (h) the Contractor's Proposal and any other documents forming part of the Contract.

Article 2.1

Contractor's consortium

Pursuant to your meeting the qualification requirements as specified in the table for qualification factor detailing out the experience as provided in Part I of the bid documents, the composition of the consortium shall be as under:

- (a) Lead Partner: Premier Rail Corporation
- (b) Partner 1: Hightech Private Limited
- (c) Specialist Sub-Contractor for Auxiliary Station Works:
 - (i) M/s Subratan Group Private Limited (Andromeda)

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Article 5.1

Design Obligations

The Contractor shall carry out, and be responsible for, the design of the Works. Design shall be prepared by qualified designers who are engineers or other professionals who comply with the criteria (if any) stated in the Employer's Requirements with reference to purpose, scope, design and/or other technical criteria for the works and Installation, Testing and Commissioning. Unless otherwise stated in the Contract, the Contractor shall submit to the Engineer for consent the name and particulars of each proposed designer and design Subcontractor.

The Contractor warrants that he, his designers and design Subcontractors have the experience and capability necessary for the design. The Contractor undertakes that the designers shall be available to attend discussions with the Engineer at all reasonable times, until the expiry date of the relevant Defects Notification Period.

Article 10.1

General

10.1.1 The Contractor shall be responsible for the design of the Works and shall ensure his design is accurate and in compliance with the Employer's Requirements and the Specifications which are deemed to be part of the Contract as defined in Conditions of Contract. The Contractor shall be responsible and ensure that the Works are fit for the intended purposes as specified in the Contract.

Contractor's Warranty of Design

10.1.2 The Contractor warrants that the Contractor's design meets the Employer's Requirements and Specifications provided by the Employer and is fit for the purpose thereof. Where there is any inadequacy, insufficiency, impracticality or unsuitability in or of the Employer's Requirements and Specification or any part thereof, the Contractor's design shall take into account, address or rectify such inadequacy, insufficiency, impracticality or unsuitability at Contractor's own cost.

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Article 12

Subcontractors

The Contractor shall not subcontract the whole of the Works.

The Contractor shall be responsible for the acts or defaults of any Subcontractor, his agents or employees, as if they were the acts or defaults of the Contractor. Unless otherwise stated in the Particular Conditions:

- (a) the Contractor shall not be required to obtain consent to suppliers of Materials, or to a subcontract for which the Subcontractor is named in the Contract;
- (b) the prior consent of the Engineer shall be obtained to other proposed Subcontractors; and
- (c) the Contractor shall give the Engineer not less than 28 days' notice of the intended date of the commencement of each Subcontractor's work, and of the commencement of such work on the Site.

Article 13

Joint and Several Liability

If the Contractor constitutes (under applicable Laws) a joint venture, consortium or other unincorporated grouping of two or more persons, the Contractor shall not alter its composition or legal status without the prior consent of the Employer.

Article 20

Arbitration

Any dispute or difference arising out of or in connection with the present agreement, shall be finally settled by international arbitration. Unless otherwise agreed by both Parties:

- (a) the dispute shall be finally settled under the arbitration rules of the Worldwide Chamber of Commerce;
- (b) the dispute shall be settled by a Sole Arbitrator appointed in accordance with these Rules;
- (c) the seat of arbitration will be Andromeda; and

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(d) the arbitration shall be conducted in the English language only.

Clause 1.11 of the Employer's Requirements General Specifications

The Contractor shall appoint a fully qualified and experienced full-time Chief Design Personnel, whose credentials has been submitted by the Contractor along with the Bid Documents as part of his technical proposal and has been accepted by the Employer. The Chief Design Personnel shall act as a representative of Design Team and shall be wholly responsible for the Contractor's design Works.

Clause 2.1 of the Employer's Requirements Technical Specifications

All design submissions shall include a 'Design Certificate' duly signed by the individual who actually does the design in case the Contractor himself is the designer or the authorized representative of any entity engaged by the Contractor in case the Contractor himself is not the designer (the Designer).

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APPENDIX – 2

Clause 2

Design Obligations

The Subcontractor/ Designer warrants and undertakes to the Employer that he has exercised and will continue to exercise all the skill and care to be expected of a professionally qualified and competent designer experienced in work of similar nature and scope as the Works in carrying out the design of the temporary and permanent works and in performing the other duties and functions ascribed to him.

Clause 3

Terms and Conditions of Exit

The Designer agrees that he will not, without first giving the Employer not less than 21 days' previous notice in writing, exercise any rights it may have to terminate the Consultancy Agreement with PRHPL or to treat the same as having been as repudiated by PRHPL or to discontinue the performance of any duties to be performed by the Designer pursuant thereto. The Designer's right to terminate the Consultancy Agreement or to treat the same as having been repudiated or to discontinue the performance thereof shall cease if, within such period of notice, the Employer shall give notice in writing to the Designer requiring the Designer to accept the instructions of the Employer or his appointee to the exclusion of the Contractor in respect of the carrying out and completion of the Contract Works upon the terms and conditions of the Consultancy Agreement.

Clause 10

Agreement

This Designer's Warranty shall be construed and interpreted to be read with the Contract executed by and between SRCA and PRHPL and shall form an integral part thereto.

Clause 18

Arbitration

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Any dispute which is not resolved amicably by mediation, as provided in this agreement, shall be finally settled by arbitration.

The parties expressly agree any disputes arising under or in connection with this agreement shall be finally resolved by arbitration and the award rendered by the arbitral tribunal shall be final and binding on the parties. The arbitration shall be conducted in accordance with the Arbitration and Conciliation Act of Andromeda and the same shall be a domestic arbitration governed by the arbitration rules of the Western Chamber of Commerce. The language of the arbitration shall be English and the tribunal shall comprise of a Sole Arbitrator.

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APPENDIX – 3

Rule 4 – Request for Arbitration

A party wishing to commence arbitration under the rules shall submit its Request for Arbitration to the Secretariat at any of the offices specified in the rules. The Secretariat shall notify the claimant and respondent of the receipt of the request and date of receipt of such request.

The date on which such request for arbitration is received by the Secretariat, shall for all purposes be deemed as the date of commencement of arbitration.

Rule 5 – Answer to the Request

Within 30 days from the receipt of request from the Secretariat, the respondent shall submit an answer which shall contain information related to the name, description, address and other contact details along with the comments regarding the nature and circumstances giving rise to the claims and basis upon which such claims are made.

Rule 10 – Joinder of Additional Parties

A party wishing to join an additional party to the arbitration shall submit its request for arbitration against the additional party to the Secretariat. The date on which such request is received by the Secretariat shall, for all purposes be deemed to be the date of the commencement of arbitration against the additional party. An additional party may be joined after the confirmation or appointment of any arbitrator.

Any request for joinder made after the conformation or appointment of any arbitrator shall be decided by the arbitral tribunal once constituted and shall be subject to the additional party accepting the constitution of the arbitral tribunal and agreeing to the terms of reference, where applicable. While adjudicating such request, the arbitral tribunal shall take into account all relevant circumstances, which may include whether the arbitral tribunal has prima facie jurisdiction over the additional party, the timing of the request for joinder, possible conflicts of interests and impact of the joinder on the arbitral procedure.

Rule 11 – Consolidation of Proceedings

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At the request of a party, two or more arbitrations pending under the Rules may be consolidated into a single arbitration, where:

- a) the parties have agreed to consolidation; or
- b) all of the claims in the arbitrations are made under the same arbitration agreement or agreements; or
- c) the claims in the arbitrations are not made under the same arbitration agreement or agreements, but the arbitrations are between the same parties, the disputes in the arbitrations arise in connection with the same legal relationship and the arbitration agreements are found to be compatible.

When arbitrations are consolidated, they shall be consolidated into the arbitration that commenced first, unless otherwise agreed by all parties.

Rule 18 – Challenge of Arbitrators

A challenge of an arbitrator, whether for an alleged lack of impartiality or independence otherwise, shall be made by the submission to the Secretariat of a written statement specifying the facts and circumstances on which the challenge is based.

For a challenge to be admissible, it must be submitted a party either within 30 days of receipt by that party of the notification of the appointment or confirmation of the arbitrator, or within 30 days from the date whether the party making the challenge was informed of the facts and circumstances on which the challenge is based if such date is subsequent to the receipt of such notification.